IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

MONDAY, THE 8TH JANUARY 2007 / 18TH PAUSHA 1928

RP.No. 21 of 2007(E)

AGAINST THE JUDGEMENT IN WPC.29655/2006 Dated 18/12/2006

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REVIEW PETITIONER/PETITIONER:

INDSIL ELECTROSMELTS LIMITED,
AVANASHI ROAD, COIMBATORE HAVING ITS FACTORY AT
PALLATHERI, PALAKKAD, REPRESENTED BY ITS
FINANCIAL ADVISOR V.NATARAJAN.

BY ADV. SRI.V.GIRI

RESPONDENTS: RESPONDENTS:

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1. THE KERALA STATE REGULATORY COMMISSION,
REPRESENTED BY ITS SECRETARY, THIRUVANANTHAPURAM.

2. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
POWER DEPARTMENT, SECRETARIAT,THIRUVANANTHAPURAM.

3. KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT,
KERALA STATE ELECTRICITY BOARD,VYDHYUTHI BHAVANAM,
PATTOM PALACE P.O., THIRUVANANTHAPURAM.

4. THE SPECIAL OFFICER (REVENUE),
KERALA STATE ELECTRICITY BOARD,VYDHYUTHI BHAVANAM,
PATTOM PALACE P.O., THIRUVANANTHAPURAM.

BY ADV. SRI.JOSE J.MATHEIKEL, SC, KSEB

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 08/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.BALAKRISHNAN NAIR, J.

R.P. NO.21/2007 IN

W.P.(C) NO. 29655/2006-E

ORDER

The review petitioner is the writ petitioner. It challenged the judgment under review by filing W.A.No.2412/2006. In the Writ Appeal, a ground was taken as Ground I, in which it was contended that the learned Single Judge did not advert to the contention of the petitioner, relying on Section 8 of the General Clauses Act. The said ground reads as follows:

> "It is most respectfully submitted that Learned Single Judge did not advert to the contention of the petitioner that by reason of Section 8 of General Clauses Act, the Electricity Act 2003 should be read instead of earlier enactments wherever the latter find a place in the agreement. In other words Exhibit P1 agreement should be construed as subject to other provision of Electricity Act, 2003, as on and with effect from the enforcement of Electricity Act 2003. Thus, assuming that Government had jurisdiction to adjudicate a dispute regarding clause 14(a) of the agreement between petitioner and Board said power of the Government should be treated as subject to the provisions of Electricity Act. In that view of the matter since comprehensive powers of adjudication are conferred on Electricity Regulatory Commission under Electricity Act 2003 and it should be treated as self contained in relation to those matters which are expressly provided for therein. Order of the Government should be treated only subject to any order of adjudication that Regulatory Commission is bound to pass in terms of

> Section 86 of the Act. It is most respectfully submitted that this is precisely the substance of the relief prayed for by the petitioner in the writ petition."

While considering the above ground, the Division Bench gave liberty to the appellant to file a review petition. In view of the said observation in the writ appeal judgment, this Review Petition is filed.

2. The learned counsel for the petitioner submitted that by virtue of Section 8 of the General Clauses Act, the mention made of Indian Electricity Act, 1910 and Electricity (Supply) Act, 1948 in Clause 1 of Ext.P1 agreement, should be read as reference to Electricity Act, 2003, with effect from 10.12.2003, the date on which the said Act was enforced in Kerala. After the enforcement of the Electricity Act, 2003, by virtue of Clause 1 of Ext.P1, the Kerala State Electricity Regulatory Commission has exclusive jurisdiction to adjudicate the dispute between the petitioner and the K.S.E.B., concerning implementation of clause 14(a) of Ext.P1, notwithstanding clause 25 of the said agreement, conferring jurisdiction on the Government to adjudicate the same, it is submitted.

3. I am not sure whether the point based on Section 8 of the General Clauses Act was urged urged before me. But, any way, I am dealing with the contention of the petitioner in the review petition on merits. Clause 1 of Ext.P1 reads as follows:

> "INDSIL ELECTROSMELTS LIMITED is hereby allowed to set up the KUTHUNGAL PHASE I & PHAS II Electric Project with 21 MW installed capacity at their own cost, the construction, operation and maintenance being managed by them as per the stipulations insisted upon by the Govt/KSEB and subject to the stipulated conditions as per Indian Electricity Act 1910, Electricity (Supply) Act 1948, other related rules and orders from the Central and/or State Governments. The KSEB will issue consent in accordance with the Electricity (Supply) Act 1948 and Rules to be framed by the Government of Kerala from time to time, in the matter, for the INDSIL ELECTROSMELTS LIMITED to construct and operate the KUTHUNGAL PHASE I & PHASE II. The Company agrees to abide by the rules and regulations to be framed by the State Government and/or KSEB from time to time in the matter of electricity generation by private agencies." (Emphasis supplied)

So, in the matter of construction, operation and maintenance, the provisions of the Electricity Act, 2003 will apply in the light of Section 8 of the General Clauses Act. But, the dispute between the K.S.E.B and the review petitioner concerning the interpretation of clause 14(a) has nothing to do with construction, operation and maintenance, though the learned counsel for the petitioner would submit that resolution of that dispute will come under the "operation" of the project. But, I feel that the said interpretation plainly runs counter to the ordinary meaning of the word "operation" and therefore, cannot be accepted.

In this view of the matter, I feel that the contention urged by the petitioner, relying on Section 8 of the General Clauses Act will not improve

its case. Other incidental contentions have already been dealt with by me under paragraph 15 of the judgment. Accordingly, the Review Petition is dismissed.

8th January, 2007. K.BALAKRISHNAN NAIR, JUDGE.

Nm/